**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE SIDE**

**WRIT PETITION NO. 2577 OF 2007**

The Principal, M.S.Kakade College
Senior college (Arts & Commerce)
and another .... Petitioner

versus

Ramdas Balasaheb Pawar and others..... Respondent.

Shri Vijay Patil for the petitioner

**CORAM; A.P. DESHPANDE, J.**
**DATED; 12TH APRIL, 2007**

**P.C.;**

1. The respondent was working as a Senior Clerk in petitioner no.1 College which is administered by the petitioner no.2 society. The respondent submitted an application on 12-8-2005 for voluntary retirement. The petitioner considered the said application in its local Managing Committee Meeting on 31-8-2005 and decided to accept the application for voluntary retirement with effect from 1-11-1005. The respondent in the intervening period changed his mind and moved an application on 26-10-2005 for withdrawal of the application for voluntary retirement, and further prayed for cancellation of the earlier request made for voluntary retirement. However, the request made by the respondent on 26-10-2005 to withdraw the

voluntary retirement, was not favourably considered and the respondent was prevented from attending the duties with effect from 1-11-2005.

2. Aggrieved thereby the respondent filed an appeal before the College Tribunal and the question that fell for consideration before Presiding Officer was as to whether was the employee justified in withdrawing the application for voluntary retirement before the "effective date" which goes to severe the employer-employee relationship and the tribunal has answered the question by holding that an employee can withdraw the application for voluntary retirement before severance of the relationship of the employer-employee viz.before the effective date.

3. The learned counsel for the petitioner does not dispute the legal position which emerges from various judgments of the Supreme Court which is crystalised in the judgment of the Supreme Court, reported in **AIR 2002 S.C. page 1341, Shambbu Murari Sinha Vs. Project and Development India Ltd and another.** The learned counsel, however, submits that under the present scheme there is a bar to the withdrawal of the application for voluntary retirement. My attention is invited to the voluntary retirement scheme contained in Government Resolution dated 7th March 1990.

Perusal of para 2 of the said scheme clearly reveals various criteria laid down for opting voluntary retirement. The scheme postulates that such of the employees who have completed 20 years of qualifying service, can seek voluntary retirement after serving the management three month's notice in writing. The relevant clause is sub clause (7) on which reliance is placed by the learned counsel for the petitioner. If freely translated clause (7) reads thus:

> "Permission shall be granted to withdraw the notice of voluntary retirement if the same is sought by an employee before the date on which he desires to retire voluntarily."

Sub clause (7) is contrary to what is being contended by the learned counsel for the petitioner in as much as the said clause postulates grant of permission to withdraw the notice of voluntary retirement if the said request is made prior to the effective date. Under the scheme itself three month's notice is contemplated and hence the present petitioner as well took a decision to severe the relationship of emepeloyer-employee with effect from 1-11-2005 and the application for withdrawal of the notice of voluntary retirement was made prior to the effective date.

4. In this view of the matter there is no illegality in the judgment and order passed by the College Tribunal warranting any interference in exercise of writ jurisdiction.

5. The learned counsel has further urged that the impugned order passed by the tribunal needs to be interfered with atleast to the extent of grant of full backwages. Reliance is placed on a judgment of the Supreme Court reported in **(2005) 5 SCC 591.** In the said judgment the Supreme Court was considering the question of grant of backwages when the termination was found to be in violation of section 25-F of the Industrial Disputes Act. The analogy of grant of backwages has no relavance to a situation which emerges on account of withdrawal of notice of voluntary retirement by an employee and the employer keeps the employee out of employment, despite withdrawal of notice of voluntary retirement. The judgment on which reliance is placed by the learned counsel for the petitioner is not applicable to the facts of the present case. Hence writ petition is summarily dismissed.

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